

By: Pena

H.B. No. 3060

A BILL TO BE ENTITLED

AN ACT

relating to issuance by a court of a *capias* or a *capias pro fine*.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Article 15.18, Code of Criminal Procedure, is amended by adding Subsection (d) to read as follows:

(d) This article does not apply to an arrest made pursuant to a *capias pro fine* issued under Chapter 43 or Article 45.045.

SECTION 2. Articles 17.19(b) and (c), Code of Criminal Procedure, are amended to read as follows:

(b) In a prosecution pending before a court, if [~~If~~] the court [~~or magistrate~~] finds that there is cause for the surety to surrender the surety's [~~his~~] principal, the court shall issue a [~~warrant of arrest or~~] *capias* for the principal. In a prosecution pending before a magistrate, if the magistrate finds that there is cause for the surety to surrender the surety's principal, the magistrate shall issue a warrant of arrest for the principal. It is an affirmative defense to any liability on the bond that:

(1) the court or magistrate refused to issue a *capias* or warrant of arrest [~~or *capias*]~~ for the principal; and

(2) after the refusal to issue the *capias* or warrant of arrest, [~~or *capias*]~~ the principal failed to appear.

(c) If the court or magistrate before whom the prosecution is pending is not available, the surety may deliver the affidavit to any other magistrate in the county and that magistrate, on a finding

1 of cause for the surety to surrender the surety's ~~[his]~~ principal,  
2 shall issue a warrant of arrest ~~[or capias]~~ for the principal.

3 SECTION 3. Article 23.01, Code of Criminal Procedure, is  
4 amended to read as follows:

5 Art. 23.01. DEFINITION OF A "CAPIAS". In this chapter, a  
6 ~~[A]~~ "capias" is a writ that is:

7 (1) issued by a judge of the court having jurisdiction  
8 of a case after commitment or bail and before trial, ~~[the court]~~ or  
9 by a clerk at the direction of the judge; ~~[7]~~ and

10 (2) directed "To any peace officer of the State of  
11 Texas", commanding the officer ~~[him]~~ to arrest a person accused of  
12 an offense and bring the arrested person ~~[him]~~ before that court  
13 immediately~~[7]~~ or on a day or at a term stated in the writ.

14 SECTION 4. Article 23.031, Code of Criminal Procedure, is  
15 amended to read as follows:

16 Art. 23.031. ISSUANCE OF CAPIAS IN ELECTRONIC FORM. A  
17 district clerk, county clerk, or court may issue in electronic form  
18 a capias for the failure of a person to appear before a court~~[7, pay a~~  
19 ~~fine7]~~ or comply with a court order.

20 SECTION 5. Article 23.04, Code of Criminal Procedure, is  
21 amended to read as follows:

22 Art. 23.04. IN MISDEMEANOR CASE. In misdemeanor cases, the  
23 capias or summons shall issue from a court having jurisdiction of  
24 the case on the filing of an information or complaint. The summons  
25 shall be issued only upon request of the attorney representing the  
26 State and on the determination of probable cause by the judge, and  
27 shall follow the same form and procedure as in a felony case.

1 SECTION 6. Article 23.05(a), Code of Criminal Procedure, is  
2 amended to read as follows:

3 (a) If a forfeiture of bail is declared by a court or a  
4 surety surrenders a defendant under Article 17.19, a capias shall  
5 be immediately issued for the arrest of the defendant, and when  
6 arrested, in its discretion, the court may require the defendant,  
7 in order to be released from custody, to deposit with the custodian  
8 of funds of the court in which the prosecution is pending current  
9 money of the United States in the amount of the new bond as set by  
10 the court, in lieu of a surety bond, unless a forfeiture is taken  
11 and set aside under the third subdivision of Article 22.13 [~~of this~~  
12 ~~code~~], in which case the defendant and the defendant's [~~his~~  
13 sureties shall remain bound under the same bail.

14 SECTION 7. Chapter 43, Code of Criminal Procedure, is  
15 amended by adding Article 43.015 to read as follows:

16 Art. 43.015. DEFINITIONS. In this chapter:

17 (1) "Capias" means a writ that is:

18 (A) issued by a court having jurisdiction of a  
19 case after judgment and sentence; and

20 (B) directed "To any peace officer of the State  
21 of Texas" and commanding the officer to arrest a person convicted of  
22 an offense and bring the arrested person before that court  
23 immediately or on a day or at a term stated in the writ.

24 (2) "Capias pro fine" means a writ that is:

25 (A) issued by a court having jurisdiction of a  
26 case after judgment and sentence for unpaid fines and costs; and

27 (B) directed "To any peace officer of the State

1 of Texas" and commanding the officer to arrest a person convicted of  
2 an offense and bring the arrested person before that court  
3 immediately.

4 SECTION 8. Chapter 43, Code of Criminal Procedure, is  
5 amended by adding Article 43.021 to read as follows:

6 Art. 43.021. CAPIAS OR CAPIAS PRO FINE IN ELECTRONIC FORM.  
7 A capias or capias pro fine may be issued in electronic form.

8 SECTION 9. Article 43.03, Code of Criminal Procedure, is  
9 amended by amending Subsection (d) and adding Subsection (e) to  
10 read as follows:

11 (d) A court may not order a defendant confined under  
12 Subsection (a) of this article unless the court at a hearing makes a  
13 written determination that:

14 (1) [~~determines that~~] the defendant is not indigent  
15 and has failed to make a good faith effort to discharge the fines  
16 and costs [~~or determines that the defendant wilfully refused to pay~~  
17 ~~or failed to make sufficient bona fide efforts legally to acquire~~  
18 ~~the resources to pay and enters that determination in writing in the~~  
19 ~~court docket]; or [~~and~~]~~

20 (2) the defendant is indigent and:

21 (A) has failed to make a good faith effort to  
22 discharge the fines and costs under Article 43.09(f); and

23 (B) could have discharged the fines and costs  
24 under Article 43.09 without experiencing any undue hardship  
25 [~~determines that no alternative method of discharging fines and~~  
26 ~~costs provided by Article 43.09 of this code is appropriate for the~~  
27 ~~defendant].~~

1        (e) This article does not apply to a court governed by  
2 Chapter 45.

3        SECTION 10. Article 43.04, Code of Criminal Procedure, is  
4 amended to read as follows:

5        Art. 43.04. IF DEFENDANT IS ABSENT. When a judgment and  
6 sentence have been rendered against a defendant [~~for a fine~~] in the  
7 defendant's [~~his~~] absence, the court may order a capias issued for  
8 the defendant's [~~his~~] arrest. The sheriff shall execute the capias  
9 by bringing the defendant before the court or by placing the  
10 defendant in jail until the defendant [~~he~~] can be brought before the  
11 court.

12        SECTION 11. Article 43.05, Code of Criminal Procedure, is  
13 amended to read as follows:

14        Art. 43.05. CAPIAS PRO FINE SHALL RECITE [~~WHAT~~]. (a) A  
15 [~~where such~~] capias pro fine issued for the arrest and commitment of  
16 a defendant convicted of a misdemeanor or felony, or found in  
17 contempt, the penalty for which includes a fine, [~~issues, it~~] shall  
18 recite [~~state the rendition and amount of~~] the judgment and  
19 sentence[~~r~~] and command a peace officer [~~the sheriff~~] to  
20 immediately bring the defendant before the court.

21        (b) A capias pro fine authorizes a peace officer to [~~or~~]  
22 place the defendant [~~him~~] in jail until the business day following  
23 the date of the defendant's arrest if the defendant cannot [~~he can~~]  
24 be brought before the court immediately.

25        SECTION 12. Article 43.06, Code of Criminal Procedure, is  
26 amended to read as follows:

27        Art. 43.06. CAPIAS OR CAPIAS PRO FINE MAY ISSUE TO ANY

1 COUNTY. A [~~The~~] capias or capias pro fine [~~provided for in this~~  
2 ~~Chapter~~] may be issued to any county in the State, and shall be  
3 executed and returned as in other cases, but no bail shall be taken  
4 in such cases.

5 SECTION 13. Article 43.07, Code of Criminal Procedure, is  
6 amended to read as follows:

7 Art. 43.07. EXECUTION FOR FINE AND COSTS. In each case of  
8 pecuniary fine, an execution may issue for the fine and costs,  
9 though a capias pro fine was issued for the defendant; and a capias  
10 pro fine may issue for the defendant though an execution was issued  
11 against the defendant's [~~his~~] property. The execution shall be  
12 collected and returned as in civil actions. When the execution has  
13 been collected, the defendant shall be at once discharged; and  
14 whenever the fine and costs have been legally discharged in any way,  
15 the execution shall be returned satisfied.

16 SECTION 14. Article 43.09, Code of Criminal Procedure, is  
17 amended by adding Subsection (n) to read as follows:

18 (n) This article does not apply to a court governed by  
19 Chapter 45.

20 SECTION 15. Article 43.091, Code of Criminal Procedure, is  
21 amended to read as follows:

22 Art. 43.091. WAIVER OF PAYMENT OF FINES AND COSTS FOR  
23 INDIGENT DEFENDANTS [~~IN JUSTICE OR MUNICIPAL COURT~~]. A [~~municipal~~  
24 ~~court, regardless of whether the court is a court of record, or a~~  
25 ~~justice~~] court may waive payment of a fine or cost imposed on a  
26 defendant who defaults in payment if the court determines that:

27 (1) the defendant is indigent; and

1           (2) each alternative method of discharging the fine or  
2 cost under Article 43.09 would impose an undue hardship on the  
3 defendant.

4           SECTION 16. Article 45.045(a), Code of Criminal Procedure,  
5 is amended to read as follows:

6           (a) If the defendant is not in custody when the judgment is  
7 rendered or if the defendant fails to satisfy the judgment  
8 according to its terms, the court may order a capias pro fine, as  
9 defined by Article 43.015, issued for the defendant's arrest. The  
10 capias pro fine shall state the amount of the judgment and sentence,  
11 and command the appropriate peace officer to bring the defendant  
12 before the court immediately or place the defendant in jail until  
13 the business day following the date of the defendant's arrest if the  
14 defendant cannot [~~can~~] be brought before the court immediately.

15           SECTION 17. Article 45.049, Code of Criminal Procedure, is  
16 amended by adding Subsection (g) to read as follows:

17           (g) A community supervision and corrections department or a  
18 court-related services office may provide the administrative and  
19 other services necessary for supervision of a defendant required to  
20 perform community service under this article.

21           SECTION 18. Chapter 45, Code of Criminal Procedure, is  
22 amended by adding Article 45.0491 to read as follows:

23           Art. 45.0491. WAIVER OF PAYMENT OF FINES AND COSTS FOR  
24 INDIGENT DEFENDANTS. A municipal court, regardless of whether the  
25 court is a court of record, or a justice court may waive payment of a  
26 fine or costs imposed on a defendant who defaults in payment if the  
27 court determines that:

- 1           (1) the defendant is indigent; and  
2           (2) discharging the fine and costs under Article  
3 45.049 would impose an undue hardship on the defendant.

4           SECTION 19. Article 45.046(a), Code of Criminal Procedure,  
5 is amended to read as follows:

6           (a) When a judgment and sentence have been entered against a  
7 defendant and the defendant defaults in the discharge of the  
8 judgment, the judge may order the defendant confined in jail until  
9 discharged by law if the judge at a hearing makes a written  
10 determination [~~determines~~] that:

11           (1) the defendant is not indigent and has  
12 [~~intentionally~~] failed to make a good faith effort to discharge the  
13 fine and costs [~~judgment~~]; or

14           (2) the defendant is [~~not~~] indigent and:

15                   (A) has failed to make a good faith effort to  
16 discharge the fines and costs under Article 45.049; and

17                   (B) could have discharged the fines and costs  
18 under Article 45.049 without experiencing any undue hardship.

19           SECTION 20. Article 102.011(a), Code of Criminal Procedure,  
20 is amended to read as follows:

21           (a) A defendant convicted of a felony or a misdemeanor shall  
22 pay the following fees for services performed in the case by a peace  
23 officer:

24           (1) \$5 for issuing a written notice to appear in court  
25 following the defendant's violation of a traffic law, municipal  
26 ordinance, or penal law of this state, or for making an arrest  
27 without a warrant;

1           (2) \$50 for executing or processing an issued arrest  
2 warrant, ~~[or]~~ capias, or capias pro fine with the fee imposed for  
3 the services of:

4           (A) the law enforcement agency that executed the  
5 arrest warrant or capias, if the agency requests of the court, not  
6 later than the 15th day after the date of the execution of the  
7 arrest warrant or capias, the imposition of the fee on conviction;  
8 or

9           (B) the law enforcement agency that processed the  
10 arrest warrant or capias, if the executing law enforcement agency  
11 failed to request the fee within the period required by Paragraph  
12 (A) of this subdivision;

13           (3) \$5 for summoning a witness;

14           (4) \$35 for serving a writ not otherwise listed in this  
15 article;

16           (5) \$10 for taking and approving a bond and, if  
17 necessary, returning the bond to the courthouse;

18           (6) \$5 for commitment or release;

19           (7) \$5 for summoning a jury, if a jury is summoned; and

20           (8) \$8 for each day's attendance of a prisoner in a  
21 habeas corpus case if the prisoner has been remanded to custody or  
22 held to bail.

23           SECTION 21. Articles 43.09(m) and 43.12, Code of Criminal  
24 Procedure, are repealed.

25           SECTION 22. This Act takes effect September 1, 2007.